IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 378 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STERLING ENTERPRISE LTD. - Appellant(s)
Versus
SANJAY V. VADHERA - Defendant(s)

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Appearance :
MS MEGHA JANI for Appellant(s) : 1,
MR. M.A.PARIKH for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 12/07/2006

ORAL JUDGMENT

1. By filing instant Appeal from Order under Order 43 Rule 1(r) of the Code of Civil Procedure, (“the Code” for short), the Appellant seeks to

challenge the order dated 2.8.2005 recorded below application Exh.106 in Regular Civil Suit No. 284 of 2002 by the learned 3rd Additional Civil Judge, Ahmedabad Rural at Navrangpura, by which the application filed by the Respondent under Order 7 Rule 10(A) of the Code has been granted and thereby Regular Civil Suit No. 284 of 2002 has been returned to the appellant for presentation to the proper Court.

2. The Appellant (the Plaintiff for short) has filed Regular Civil Suit No. 284 of 2002 in the Court of Civil Judge (JD) at Ahmedabad for declaration and permanent injunction against the Respondent (“defendant” for short). It is the case of the Plaintiff that the Defendant had entered into a Memorandum of Understanding with the Plaintiff for purchase of Bungalow No. 4 in the scheme of Garden City, having built up area of 310 sq. yards for the consideration of Rs.15,48,000/-. The Defendant had paid Rs.50,000/- in cash and had given cheques for the remaining amount. The possession of the property was handed over to the Defendant by the Plaintiff. However, thereafter all the cheques were returned dishonoured for insufficient balance in the account, and hence the Suit was filed for declaration and permanent injunction and other consequential reliefs.

3. The Defendant appeared and contested the Suit by filing written statement, inter alia, denying all the averments made in the Plaint and prayed

for dismissal of the Suit.

4. The learned Judge has framed the issues on 10.2.2003 and thereafter evidence was recorded. The Plaintiff submitted purshis closing its evidence on 15.7.2003 at exh. 103. Thereafter the Defendant also submitted his purshis for closing evidence at exh. 105 on 16.7.2005. The Defendant thereafter gave an application at exh. 106 for framing preliminary issue to the effect that since the value of the Suit property is Rs.16,46,000/-, the Court of Civil Judge (JD) does not have pecuniary jurisdiction. The learned Civil Judge vide order dated 2.8.2005 has granted application and returned the Plaint to the Plaintiff under Order 7 Rule 10(A) of the Code for presentation to the proper Court, which has given rise to the present Appeal from Order at the instance of the original Plaintiff.

5. Ms. Megha Jani, learned advocate of the Plaintiff, submitted that the Plaintiff will accept the Plaint from the Court of learned Civil Judge (JD), Ahmedabad within a period of two weeks hereof, in terms of the impugned order, and shall present the same in the Court of learned Principal Senior Civil Judge, Ahmedabad Rural, at Navrangpura within a period of two weeks thereafter, together with the deficit Court Fees stamp, chargeable on the amount of Rs. 16,46,000/-. She further contended that the evidence of both the parties are over and the Suit is awaited for argument of

the learned advocates appearing for the parties, therefore, necessary directions may be issued to the learned Principal Senior Civil Judge, Ahmedanad Rural, at Navrangpura to the effect that he shall proceed from the stage at which the Suit stood transferred, meaning thereby, the learned Principal Senior Civil Judge, Ahmedabad Rural, at Navrangpura need not record the evidence denovo or afresh and shall decide the Suit after recording the submissions of the learned advocates appearing for the parties.

6. In this connection Ms. Megha Jani, learned advocate of the Plaintiff has relied upon the judgement of the Supreme Court in the case of Joginder Tuli v. S.L.Bhatia and another, (1997) 1 SCC 502.

7. Mr. M.A.Parikh, learned advocate of the Defendant submitted that in view of the statement made by Ms. Megha Jani, learned advocate of the Plaintiff, appropriate orders may be passed.

8. This Court has considered the submissions advanced by Ms. Megha Jani, learned advocate of the Plaintiff and Mr. M.A.Parikh, learned advocate of the Defendant. This Court has also perused the impugned judgement and the statutory provisions contained under the Code as well as the decision of the Supreme Court in the case of Joginder Tuli v. S.L.Bhatia (supra), cited by Ms. Megha Jani, leaned advocate of the Plaintiff.

9. In view of the submission made by Ms. Megha Jani, learned advocate of the Plaintiff, if the Plaintiff is directed to accept the Plaint from the Court of the learned Civil Judge (JD), Ahmedabad in terms of the impugned order, within a period of two weeks hereof and present the same in the Court of learned Principal Senior Civil Judge, Ahmedabad Rural, at Navrangpura, within a period of two weeks thereafter, together with the deficit Court fees stamp, chargeable on the amount of Rs.16,46,000/-, the same would meet the ends of justice.

10. On presentation of the Plaint, alongwith the deficit Court fees stamp, as aforesaid, the learned Principal Senior Civil Judge, Ahmedabad Rural, at Navrangpura, shall register the Civil Suit by giving it a new number and thereafter shall decide the same strictly in accordance with law.

11. On the facts and in the circumstances emerging from the record of the case, since the evidence of both the parties have been recorded by the learned Civil Judge (JD), Ahmedabad while trying the Regular Civil Suit No. 284 of 2002 and the said Suit is awaited for argument, therefore according to this Court, the learned Principal Senior Civil Judge, Ahmedabad Rural, at Navrangpura, before whom the Suit is presented for registration, need not record the evidence denovo or afresh, and direction is required to be issued to the learned Principal Senior Civil

Judge, Ahmedabad Rural, at Navrangpura that he shall proceed from the stage at which the Suit stood transferred, meaning thereby the learned Principal Senior Civil Judge, Ahmedabad Rural, at Navrangpura need not record the evidence denovo or afresh and shall decide the Suit after recording the submissions of the learned advocates appearing for the parties.

12. For coming to the aforesaid conclusion, this Court gets support of the judgement in the case of Joginder Tuli v. S.L.Bhatia (supra), wherein the Supreme Court has held that; *normally, when the plaint is directed to be returned for presentation to the proper court perhaps it has to start from the beginning but in this case, since the evidence was already adduced by the parties, the matter was tried accordingly. The High Court had directed to proceed from that stage at which the suit stood transferred. There is no illegality in the order passed by the High Court warranting interference*.

13. Applying the principle laid down by the Supreme Court in the above referred to judgement to the facts of the instant case, since the recording of evidence has already been concluded, it is desirable that the learned Principal Senior Civil Judge shall decide the Suit after hearing the arguments of the learned advocates appearing for the parties.

14. For the foregoing reasons, the Appeal from Order succeeds and accordingly it is partly allowed.

It is hereby directed that the plaintiff shall take back the Plaint from the Court of the learned Civil Judge (JD) within a period of two weeks hereof and thereafter present the same to the Court of learned Principal Senior Civil Judge, Ahmedabad Rural, at Navrangpura, together with deficit court fees stamp, within a period of two weeks thereafter. The learned Principal Senior Civil Judge, on presentation of the Plaint shall register the Suit by giving it new number and proceed from the stage of recording of submissions, as the recording of evidence has already been concluded, and decide the same strictly in accordance with law.

15. The Plaintiff and Defendant shall appear before the learned Principal Senior Civil Judge, Ahmedabad Rural, at Navrangpura, with their respective advocates on 21.8.2006 for making their oral submissions.

16. Since the Appeal from Order is disposed of, Civil Application No. 12142 of 2005, which is filed for stay of the impugned order dated 2.8.2005, also stands disposed of accordingly. Rule is made absolute to the aforesaid extent. Interim relief granted earlier shall stand vacated.

(A.M.Kapadia,J)

Jayanti*